IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY THIRD DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE M.H.S. ANSARI

and
THE HON'BLE MR JUSTICE T.CH.SURYA RAO

WRIT PETITION NO : 23319 of 2004

Between:

M/s Damera Concerns Dall and Oils Mills Patamata, Vijayawada, Krishna District.
Represented by its Partner Damera KasiViswanadha Rao, S/o. Jagannadha Rao.

..... PETITIONER

AND

1 The Commercial Tax Officer Benz Circle, Vijayawada,

Krishna District.
2 The Appellate Deputy Commissioner of Commercial Taxes

Vijayawada, Krishna District.
3 The Additional Commissioner of Commercial Taxes (Legal)

FAC) o/o.The Commissioner of Commercial Taxes Excise-

Commercial Taxes Building, Opp. Gandhi Bhavan

M.J.Road, Nampally, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction particularly in the nature of writ of Certiorari calling for the entire record relating to the proceedings of the third respondent in Ref.No.LV(2)/2478/2004 rejecting the stay sought for by the petitioner for collection of the disputed tax of Rs.84,957/- relating to assessment year 2001-2002 pending appeal and the said proceedings as illegal, arbitrary and opposed to the law laid down by the Honourable Apex Court in recent Judgment reported in 137 STC 389 in the case of M/s ASSOCIATED CEMENT COMPANIES LIMITED Vs STATE OF BIHAR & OTHERS and direct the first respondent not to take any coercive steps for recovery of the above disputed tax pending disposal of the appeal on the file of STAT, Hyderabad and grant such other relief or reliefs as are deemed fit and proper in the circumstances of the case.

Counsel for the Petitioner:MR.M.V.J.K.KUMAR

Counsel for the Respondent Nos. 1 to 3.: GP FOR COMMERCIAL TAXES

The Court made the following :

O R D E R (Per MHSA,J)

Having heard learned counsel for respective parties, we are inclined to dispose of the instant writ petition with certain appropriate directions.

2. Petitioner has questioned the order dated 8.9.2004 passed by the 3rd respondent whereby the petition filed seeking stay of collection of disputed tax pending disposal of the appeal before the Sales Tax Appellate Tribunal, was dismissed.

3. In such view of the matter, instant writ petition is disposed of with a direction that if the petitioner deposits fifty per cent of the disputed tax, within four weeks from date hereof, giving credit to the amounts already deposited, the appeal before the Sales Tax Appellate Tribunal shall be disposed of in accordance with law on its own merits without insisting on the balance tax to be deposited.

4. Writ petition is accordingly disposed of in terms of the above. No costs.

5. Be it clarified that we have not gone into the main controversy with regard to exemption or the liability of the dealer to pay the disputed tax.

M.H.S.ANSARI,J

T.CH.SURYA RAO

NOTE:

Issue C.C. urgently on priority basis.

B/O

To.

1 The Commercial Tax Officer Benz Circle, Vijayawada,

Krishna District.
2 The Appellate Deputy Commissioner of Commercial Taxes

Vijayawada, Krishna District.
3 The Additional Commissioner of Commercial Taxes (Legal)

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Commercial Taxes Building, Opp. Gandhi Bhavan

M.J.Road, Nampally, Hyderabad.

4. Two C.Cs. to G.P. for Commercial Taxes, A.P. High Court

Buildings, Hyderabad (O.U.T.).

5. Two C.D. copies.